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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNCATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	**CC Docket No. 96-128**
Reclassification and Compensation	)	
Provisions of the Telecommunications	)	
Act of 1996	)	

COMMENTS OF SPRINT CORPORATION ON REMAND ISSUES

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August 26, 1997

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SUMMARY

Sprint believes its original approach to per-call compensation – that no compensation should be ordered unless the PSP industry shows a revenue need, and then the appropriate compensation for dial-around and subscriber 800 calls is the marginal cost standard suggested by the Commission in its NPRM – still has substantial merit. If the PSPs are already covering their full costs of operations from other sources of revenue, any additional compensation will simply represent a windfall profit either for the PSPs or for the owners of the premises on which payphones are located.

If the Commission does not follow the above approach, then it should set a nationwide uniform rate based on the costs of the most efficient "bellwether" provider. Evidence now available to Sprint suggests that NET's operations in Massachusetts, constitute the appropriate bellwether PSP. NET's reported total costs of providing local coin service are 16.7 cents per call. From this amount, the Commission should deduct costs not attributable to dial-around and subscriber 800 calls, such as the costs related to coin functionality, the costs of switching and terminating local calls, and premises owner commission payments. The Commission previously estimated that the average costs for the first two of these items – coin functionality and local call completion – were $.11 per call. In the absence of more detailed data from NET on these costs, the Commission should rely on its earlier analysis and set the per-call rate at 5.7 cents per call.

With respect to the interim compensation plan, Sprint proposes that the Commission use actual data, once per-call compensation is implemented, to calculate each paying carrier's number of completed payphone-originated dial-around and

subscriber 800 calls per payphone, and then apply that number to the new default rate per call times the number of payphones owned by each PSP as the basis for revising interim compensation. The revised interim compensation should be paid by all carriers that receive compensable calls (including LECs and small IXCs) retroactive to November 6, 1996. If any IXC that was obligated to pay interim compensation under the previous plan has already made payments to a particular PSP that exceed its obligations under the revised interim plan, then it should be entitled either to obtain refunds from the PSP or, if it prefers, to offset its overpayments against future per-call obligations to that PSP.

With respect to compensation for 0+ calls and calls from inmate phones during the interim period, any such compensation that is awarded should be given not only to the RBOCs, but also to GTE (which, like the RBOCs, was subject to an antitrust obligation) and to independent LECs that, at a time when their payphones were part of their regulated operations, undertook to allow premises owner presubscription so as to treat all IXCs nondiscriminatorily vis-a-vis their payphones. If all carriers that received 0+ traffic from LEC payphones during the interim period have sufficient records to pay interim compensation on a per-call basis, they should be required to do so. However, in the event not all carriers have such records, there is a question whether fair compensation for the interim period is feasible. Since not all carriers that handle dial-around and subscriber 800 calls also service 0+ traffic, it would be unfair to simply inflate, for all carriers, the per-phone compensation amount applicable to LEC payphones.

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COMMENTS OF SPRINT CORPORATION ON REMAND ISSUES

Pursuant to the Public Notice released August 5, 1997 (DA 97-1673), Sprint Corporation hereby submits its views on the issues remanded to the Commission by the U.S. Court of Appeals for the District of Columbia Circuit in Illinois Public Telecommunications Association v. FCC, No. 96-1394, decided July 1, 1997.

I. DEFAULT RATE FOR SUBSCRIBER 800 AND ACCESS CODE CALLS

The first issue on which the Commission seeks comment (Public Notice at 2-3) – and clearly the core issue remanded by the Court – is the appropriate default rate for subscriber 800 and access code calls. From the outset of this proceeding, the Commission has viewed costs as the proper measure of "fair" compensation for payphone-originated calls. In the NPRM, the Commission "tentatively conclude[d] that PSPs should be compensated for their costs in originating the types of calls for which we have tentatively concluded that compensation is appropriate," 11 FCC Rcd 6716, 6736 (1996) (footnote omitted, emphasis added), and tentatively decided that these costs "should be measured by appropriate cost-based surrogates" (id., emphasis added). In this regard, twice in the NPRM, the Commission used marginal costs as the relevant measure of costs. See 11 FCC Rcd at 6726 (n. 54) and 6728 (n.64).

In its Report and Order,[1] the Commission again endorsed costs as the measure of "fair" compensation. After having suggested in the NPRM that marginal costs were the appropriate costs for judging the fairness of compensation, the Commission disavowed marginal (and incremental) costs in the Report and Order, without even acknowledging that it had suggested marginal costs as the appropriate measure of costs in the NPRM, and without giving a logical explanation of why such costs were not appropriate. Thus, the Commission found that a purely incremental standard would not permit PSPs to recover a reasonable share of joint and common costs associated with certain types of payphone calls, but did not identify what types of calls it was referring to, or explain the types of joint and common costs that would not be recovered. Report and Order, 11 FCC Rcd at 20576. Instead, the Commission determined (erroneously, as the Court held) that deregulated rates for local coin calls are the "appropriate compensation amount for other calls as well, because the cost[s] of originating the various types of payphone calls are similar," 11 FCC Rcd at 20577, and concluded (id.) that "deregulated local coin rates are the best available surrogates for payphone costs... ." See also Reconsideration Order, 11 FCC Rcd 21233, 21268 (1996).

The Commission pointedly rejected contentions of RBOCs and private PSPs that it should use non-cost "market-based surrogates," such as commissions paid by IXCs to payphone providers for 0+ calls, as a basis for payphone compensation. 11 FCC Rcd at

[1] 11 FCC Rcd 20541 (1996).

20577. Although both the RBOCs and private PSPs sought review of various aspects of the Commission's decisions in the Court, they did not challenge the Commission's reliance on costs, and its rejection of other "market-based surrogates," as the basis for establishing the "fair" compensation required by Section 276.

Thus, the issue now before the Commission on remand is not whether payphone compensation should be based on costs. Rather, the issue is how to determine the appropriate measure of costs.

In its earlier filings in this proceeding,[2] Sprint's position was that in view of the freedom of entry and exit in the payphone market, the Commission could fairly presume that PSPs would not place or keep payphones in service unless they were reasonably assured of recovering the total costs of operating those phones from the types of calls – local coin calls and 0+ calls – which would be revenue-generating to them in the absence of Commission-prescribed compensation for other calls. Thus, Sprint argued, any per-call compensation for dial-around and subscriber 800 calls was likely to be a windfall to the PSPs and would either result in excessive profits for the PSPs or be competed away in the form of higher commission payments to premises owners. This view was corroborated by RBOC and private PSP evidence showing that existing revenues far exceeded fully allocated costs. Accordingly, Sprint urged the Commission to prescribe a per-call rate of zero unless or until the PSP industry could demonstrate that it had a revenue need, over and above existing revenue streams, in order to cover its costs. Even then, Sprint argued, the appropriate measure of costs for dial-around and subscriber 800

[2] See Sprint's July 1, 1996 Comments, July 15, 1996 Reply Comments and October 26, 1996 Petition for Reconsideration.

calls would appear to be the measure the Commission itself had initially proposed: marginal costs, since these are the only costs occasioned by using a phone to complete otherwise non-revenue-generating calls. These costs essentially amount to the de minimis per-call costs of the additional wear and tear on the handset and keypad.

Sprint still believes that the approach it initially advocated is worthy of serious consideration by the Commission. The statutory requirement for fair compensation "for each and every...call" (§276(b)(1)(A), emphasis added), does not imply that such compensation must be received from each and every call. Thus, if efficient PSPs are already recovering their total costs from existing revenue streams, there is no reason to give them what amounts to a windfall profit, and there is likewise no indication that such windfalls were intended by Congress.

Sprint's belief that payphone providers already were recovering their costs from pre-existing revenue streams, and thus that any additional Commission-prescribed compensation would be a windfall, was corroborated by the CEO of one PSP shortly after the Commission's orders had been issued:[3]

> "I've always maintained one thing," says Jerry Burger, chief executive officer of AmeriCall. "I did not accept a location if I could not amortize 100 percent of my interest and principal payments and all my salaries, general and administrative expenses strictly out of coin. If I had to depend on the revenue from operator services, let alone surcharges, I didn't want the phone. To me, operator services and any type of surcharges revenue is strictly gravy."

[3] "FCC Order Jump Starts Industry," Phone+, December 1996, at 64-66.

In addition, Sprint's field personnel have reported many instances of PSPs offering to share their Commission-mandated compensation with premises owners, reinforcing Sprint's belief that the initial windfall to PSPs would sooner or later be transferred to premises owners.

Moreover, setting the per-call compensation rate at any level above marginal costs gives unscrupulous PSPs an incentive to engage in fraudulent calling of subscriber 800 numbers, since those calls are without charge to the calling party, so as merely to generate additional revenues from the payphone. At the \$.35 per call default rate established by the Commission, a PSP making four subscriber 800 calls per minute (which is within the dialing ability of a person with normal dexterity), could generate \$84 per hour. Such fraud, which can be accomplished either through installing autodialers or hiring people to make calls to 800 numbers – is very difficult to detect, because such calls are dispersed among all IXCs that offer 800 service to the public.

If the Commission chooses not to utilize the marginal cost approach it initially proposed, then it should set a nationwide default rate, based on the costs of an efficient "bellwether" PSP's costs of originating coinless long distance calls.

This rate should be set without reference to the rates for local coin calls charged by that payphone. Local coin <u>rates</u> may or may not bear a close relationship with the <u>cost</u> of local coin calls, depending on how competitive the market is. Moreover, as the Court found, local coin rates have no relationship to the costs of non-coin calls. Furthermore, tying per-call compensation rates to deregulated local coin rates (as the Commission's orders did for the period that was to commence October 7, 1998) would impose substantially greater burdens on the IXCs and LECs that are obligated to pay per-call compensation. In the first place, the task of tracking and paying compensation, if the rate can vary from one phone to the next and from one day to the next, is much more burdensome to the carriers. This burden is magnified by the Commission's decision not to require PSPs to give advance notification to the carriers of the rates charged from their payphones. And without having this information in advance, carriers have no way of knowing what their per-call compensation obligations will be for any given period of time, making it difficult for them to accurately recover these costs from their customers. Similarly, selective blocking of payphone calls on behalf of 800 subscribers – i.e., blocking calls only from certain payphones to a particular 800 number – is a far more complex undertaking (requiring in Sprint's case a seven-figure development cost) than merely offering 800 subscribers the option of blocking all payphone-originated calls. In short, the default rate should be uniform nationwide, and should not be tied to local coin rates.

Second, the default rate should be based on the costs of handling non-coin calls by an efficient payphone provider. Throughout its history, in determining how to set rates in multi-provider markets (before competition and policy changes resulted in deregulation), the Commission has held that rates should be set so as to permit the lowest-cost bellwether service provider an opportunity to earn a fair return, but should not be set so as to guarantee each and every service provider, or even the "industry average" service provider, a full return on investment. As early as 1938, the Commission rejected the notion that each service provider in a competitive market is entitled to charge rates that are fully compensatory to itself:[4]

> We are under no duty to fix rates for domestic telegraph service so that all carriers engaged therein may earn a fair return on the fair value of their property devoted to that service or even make some profit on their operations.

This view was reaffirmed a decade later:[5]

> The rate increases which we will now permit may fall short of producing a fair return for the international telegraph communications industry as a whole, and for certain of the carriers. Contrary, however, to the contentions made by the American Cable and Radio group of companies, the Commission does not consider that it is obliged by the Communications Act to fix international telegraph rates so as to meet the over-all requirements of the industry as a whole.

Following this same policy yet another decade later, the Commission explained why rates in a competitive market should not be based on industry average costs:[6]

> This is so because the adoption of an industrywide approach would, by averaging the requirements of competitors, deprive the public of the opportunity for rate benefits which were one of the reasons for introducing competition in the first place. An industry approach to ratemaking is in effect a guarantee to the less competent or less efficient operator that his failure to measure up in the competitive race will be rewarded. The industry approach would thus serve to deprive the public of the benefit of competition ratewise.

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[4] Postal Telegraph-Cable Company, et al., 5 FCC 524, 527 (1938).

[5] Charges for Communications Service Between the United States and Overseas and Foreign Points, 12 FCC 29, 62 (1947).

[6] The Western Union Telegraph Co., 25 FCC 535, 580 (1958) (footnote omitted).

Instead, the Commission reiterated its previous policy that it should fix rates no higher than necessary to "enable a sufficiently large segment of the industry to earn a fair rate of return" (id. at 581, footnote omitted). For this purpose the Commission focused on a "bellwether" carrier – a carrier sufficiently large "to assure the public of efficient service and adequate facilities" (id. at 581) that is "the most profitable" carrier (id. at 580). This bellwether concept continued to be embraced by the Commission into the 1980's, before sufficient competition emerged in those markets to supplant the need for rate regulation.[7] There is no reason why these tried and true policies should not be used by the Commission in the context of payphone compensation. Selecting a bellwether PSP relieves the Commission of the burden of examining costs of individual payphone providers, particularly those PSPs that have not been subject to any costing systems in the past. Cf. Reconsideration Order, 11 FCC Rcd at 21266.

The information available to Sprint at this time suggests that the operations of New England Telephone and Telegraph Co. ("NET") in Massachusetts should be the bellwether PSP. NET serves virtually the whole state of Massachusetts, including both large metropolitan areas and remote rural areas, and thus its operations are reasonably representative of the provision of payphone service throughout the U.S.

In conjunction with a tariff filing intended to raise its local coin rate from ten cents per call to a "market-based" rate of 25 cents per call, NET submitted data indicating that its costs of handling local coin calls amount to only 16.7 cents per call. See the

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[7] See, ITT World Communications Inc., 82 FCC 2d 282, 285-86 (1980); and 85 FCC 2d 561, 567 (1981).

materials attached as Exhibit A. Obviously, NET had no incentive, in the proceedings before the Massachusetts Department of Public Utilities, to understate its costs, particularly since the rate it was attempting to support was 50% greater than unit costs it calculated.[8] Thus, NET's reported local coin costs in Massachusetts should be the starting point for developing the nationwide benchmark.

From these local coin costs, the Commission should then subtract all of the costs reasonably attributed to (1) coin functionality in the telephone; (2) switching and termination of local calls; and (3) other cost categories that are properly not allocable to compensation for dial-around and subscriber 800 calls. The first category should include the added capital costs of including coin functionality in the payphone itself, together with the costs of maintaining and repairing the coin functionality, the costs of periodically emptying the coin box, and revenue losses from vandalism of the coin mechanism. With respect to category (2), it could be argued that none of the costs of the local phone line should be attributed to coinless toll calls, except for the interstate subscriber line charge (and, if there is no subscriber line charge for intrastate toll calls, a small portion of the local service charges that can be related to the cost of providing the loop for intrastate toll calls), since the long distance carrier is compensating the PSP's LEC, through access charges, for other local transmission costs. Other costs (see category (3) above) that should be subtracted from local coin costs in computing the per-call default compensation rate include premises owner commission payments. Those commission payments historically have been recovered from other revenue streams

[8] This fact supports Sprint's belief (p. 5, supra) that local coin rates bear no relationship to local coin costs.

available to the PSP. Including such payments in the rates carriers must pay for dial around and subscriber 800 calls will only serve to inflate the total allowance for such costs to PSPs. This will result either in an over-recovery of such costs by the PSPs or an increase – warranted not by preexisting market forces but only by the Commission's largess in setting an above-cost compensation payment – in the actual commissions paid to premises owners. There is nothing in Section 276, its legislative history, or sound policy, to suggest that the Congressional aim of requiring per-call compensation was to provide windfall profits either to PSPs or to site owners that house payphones on their premises.

Sprint cannot ascertain the amount of costs that, as discussed above, should be subtracted from the cost of local coin calls reported by NET in Massachusetts.[9] Sprint recommends that the Commission direct NET to reveal such data so that an accurate per-call cost can be calculated. In the absence of any such data from NET, the Commission should instead rely on its analysis in its NPRM in CC Docket No. 91-35, where the Commission estimated that the coin collection expense and local call completion expense together amount to $.11 per call.[10] Thus, in the absence of more detailed data from NET

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[9] Sprint is informed that the detailed cost study conducted by NET, referred to in the NET response to information requests (see the last page of Exhibit A), is confidential and its use is restricted to the Massachusetts DPU proceeding.

[10] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rcd 4736, 4747 (1991). Although the Commission ignored this analysis when it set dial-around compensation rates in that docket, its order in that docket never explained why the Commission disavowed that approach, and the Commission subsequently never has explained whether it believed that its analysis of coin collection and local call completion costs was wrong, and if so, why. Cf. Report and Order, 11 FCC Rcd at 20576-77.

relating to its submission in Massachusetts, or evidence from any other PSP that its costs are any lower than those of NET (and Sprint finds it highly doubtful any PSP will submit such evidence), the best indicator of a bellwether per-call rate would be 5.7 cents per call (16.7 - 11).

It is far from clear that there should be any periodic increases in the allowable compensation per call. If, as a result of the Commission's action in this docket, payphone competition intensifies, it can be expected that PSPs, on the whole, will become more efficient, rather than less efficient. If anything, this would suggest that the compensation be adjusted downward periodically to account for such increases in efficiency. However, basing the rate, as Sprint proposes, on an efficient bellwether PSP should obviate the need for such downward adjustments, absent a technological change that would permit the bellwether PSP to become more efficient. Even though the "average" PSP may become more efficient over time because of additional competitive pressures, it may well be that the efficiency of the average PSP will simply approximate the efficiency of the bellwether PSP.

II. INTERIM COMPENSATION FOR SUBSCRIBER 800 AND ACCESS CODE CALLS

Under the Commission's orders, compensation for calls handled from November 6, 1996 through October 6, 1997, was to be based on a per-line amount of $45.85, which was obtained by multiplying the Commission's default rate of $.35 per call times an assumed average of 131 compensable calls per payphone per month. This sum was then allocated among IXCs having in excess of $100 million in annual toll revenues on the basis of toll revenue market share. See Report and Order, 11 FCC Rcd at 20601-04. The

Court (slip op. at 16-17) faulted this approach to interim compensation on three grounds: (1) the default rate of $.35 was excessive in relation to the cost of handling the non-coin calls here at issue; (2) the Commission erred in limiting interim compensation only to large IXCs and not including other carriers (e.g., small IXCs and LECs) that also receive compensable calls; and (3) the Commission had failed to demonstrate any nexus between toll revenues and the number of compensable calls handled.[11]

Sprint would point out, as a preliminary matter, that nothing in the statute required the Commission to implement payphone compensation by any particular date. The Commission's sole obligation was to fashion rules for such compensation and complete reconsideration of those rules within nine months of the enactment of the 1996 Act. See §276(b)(1) of the Act. Thus, the Commission would have been entirely free to delay the implementation of compensation until compensation on a per-call basis was feasible. Since the Commission chose, instead, to implement an interim plan, the Commission should now undertake to correct interim compensation for all the errors pointed to by the Court. If the Commission finds that it cannot correct all of these errors, it may wish to reconsider whether interim compensation is appropriate.

Given the lack of reported historical data on the number of compensable payphone calls handled by various carriers, Sprint believes the most accurate basis of assessing interim compensation is to use experienced data under per-call compensation to

[11] Although it may be noted that no party challenged the average number of calls per payphone in the Court of Appeals, there is reason to believe that this figure overestimates the number of completed calls per payphone, and it is only completed calls that are compensable once the per-call rate is implemented. See Reply Comments of Sprint, filed in this docket, on June 13, 1997, regarding the Petition for Waiver filed by Telco Communications Group, at 2-4.

determine each carrier's interim obligation. Specifically, Sprint proposes that each carrier (LEC or IXC) that is obligated to pay per-call compensation calculate (and report to the Commission) the total number of compensable dial-around and subscriber 800 calls it handles for the calendar month of November 1997 – the first entire month for which per-call compensation is required. Each such carrier should divide its number of compensable calls by the total number of payphone lines, as reported on the most recent LEC payphone lists. This will yield, for each carrier obligated to pay compensation, its average number of compensable calls per payphone line. That carrier should then calculate its interim compensation obligations for each eligible PSP, using this number of compensable calls per line per month. For example, if carrier A handled 2,600,000 compensable calls during November, and the total number of payphone ANIs is 2,000,000, then this carrier would be required to pay, for the interim period, 1.3 times the new default rate (determined as in Section I above), times the number of ANIs each payphone provider had in service, per month.[12] Thus, a PSP having 10,000 payphones would receive a monthly payment from that carrier of 13,000 times the default rate. In the event that a particular carrier's payments made thus far to a particular PSP exceed the PSP's allowable interim compensation from that carrier, the carrier should be entitled to a refund of the difference, or to offset the difference against future per-call compensation obligations to that PSP, whichever the carrier chooses. This method – using actual per-

[12] LECs would only be eligible to receive compensation for the portion of the interim period following their completion of all applicable regulatory requirements.

call data to establish each carrier's interim obligations – is, in Sprint's view, the most accurate means of revising the interim compensation plan, and the only practical way of addressing all the defects the Court found in the initial interim plan.

III. COMPENSATION FOR 0+ CALLS DURING THE INTERIM PERIOD

Another issue the Court remanded to the Commission was consideration of compensation for 0+ calls from RBOC payphones during the interim period. The Commission (Public Notice at 4) properly notes that the 0+ calls at issue are those for which the RBOC receives no contractual compensation from the presubscribed IXC, since it is only such calls that are also compensable on a per-call basis.

In the Public Notice (id.) the Commission seeks comment on how not just RBOCs, but "any other similarly situated PSP," should be compensated for such calls during the interim period. By suggesting that other similarly situated PSPs should also be eligible for such compensation, the Commission appears to have opened the door to correct a misunderstanding that goes back to its NPRM. There, the Commission assumed (11 FCC Rcd at 6725-26) that non-BOC LECs were on the same footing as private payphone providers and were eligible to select and receive compensation from the presubscribed OSP. As Sprint pointed out in its July 1, 1996 Comments (at 7), that is not correct. GTE, like the RBOCs, was under an obligation imposed by its antitrust consent decree to presubscribe its payphones, so that the premises owner could select the 0+ carrier and be compensated directly by that carrier. In addition to GTE, however, many other independent LECs, including the Sprint LECs, also allowed premises owner presubscription of their payphones, as part of their interpretation of their equal access obligations. Some of these carriers, such as the Sprint LECs and Rochester Telephone, had long distance affiliates and thus could have attempted to steer all the 0+ traffic from their payphones to their affiliated long distance service provider, but believed that such a course of action, at a time when their payphones were subject to regulation, was inconsistent with their equal access and non-discrimination obligations as common carriers. These LECs should not be singled out, as a result of their attempts to promote fair long distance competition through presubscription of their phones, for disadvantageous economic treatment vis-a-vis other LECs – the RBOCs and GTE – that were under court compulsion to so the same thing. Thus, any interim compensation for 0+ calls (specifically, those for which the PSP received no compensation from the presubscribed 0+ carrier) that is granted to RBOCs on remand should also be granted to all LECs that provided by tariff for premises owner presubscription of their payphones, and such non-BOC LECs should be eligible for per-call compensation in such instances as well.

The amount of interim compensation should be the default rate, determined as discussed in Section I above, times the number of calls handled during the period for which the LEC PSP was eligible for interim compensation. Sprint believes that it has sufficient data to determine the number of 0+ calls it handled with respect to such LEC payphone calls during the interim period and thus can pay on a per-call basis. If other 0+ carriers also have such data, then direct per-call payments are the most accurate basis for compensation during the interim period. However, if some 0+ carriers lack such data, it is not clear whether interim compensation for such calls could be fairly administered. Not all IXCs that handle dial-around and subscriber 800 calls serve 0+ traffic from payphones. Thus it would be patently arbitrary and unfair to inflate the interim per-phone payments from all carriers to account for 0+ calls from LEC phones.

IV. COMPENSATION FOR INMATE CALLS DURING INTERIM PERIOD

The same interim arrangements for 0+ calls from ordinary payphones, discussed in Section III, should also apply to inmate calls during the interim period. This includes both eligibility for compensation (specifically, inmate phones of all LECs, not just RBOCs, should be eligible), and the method of paying compensation for the interim period.

V. RETROACTIVE ADJUSTMENTS TO INTERIM COMPENSATION LEVELS AND OBLIGATIONS

As is implicit in the interim compensation plan Sprint proposed in Section II, above, the Commission should make the interim compensation obligations of all carriers that receive compensable calls from payphones, including the LECs and small IXCs that were excluded from the Commission's interim plan, retroactive to the beginning of the interim compensation period (i.e., November 6, 1996). To the extent that any IXC's payments already made to a particular PSP prior to the date the Commission's order on remand is issued, exceed its revised interim compensation obligation to that PSP, it should be entitled either to a refund of the overpayments, or to offset its overpayments against its future per-call payment obligations, whichever the IXC chooses. The Commission's authority to so correct for the errors in its prior orders is beyond question. See United Gas Improvement Co. v. Callery Properties, Inc., 382 U.S. 223, 229 (1965); see also, Western Resources, Inc. v. FERC, 72 F.3rd 147, 151 (D.C. Cir. 1995) and cases cited therein. The larger IXCs that were discriminatorily singled out for paying interim compensation made known their challenges to the Commission's interim plan well before the interim compensation plan took effect,[13] so smaller IXCs and LECs handling calls subject to the per-call compensation requirements were aware of the legal challenges to the Commission's actions. It would be arbitrary and capricious for the Commission to decline on remand to correct for the larger IXCs' past over-assessments.

VI. CONCLUSION

Sprint urges the Commission to act on remand in accordance with the views expressed above, and to do so as expeditiously as possible. All persons affected by the Commission's payphone compensation plans – carriers, PSPs, and the consumers that ultimately must foot this bill – need to be relieved of the uncertainties that now exist.

Respectfully submitted,

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[13] See, e.g., Petition of Sprint for Reconsideration, October 21, 1996, at 8-10.

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

April 14, 1997

APR 16 1997

D.P.U. 97-18

Investigation by the Department of Public Utilities on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.P.U. Nos. 10 and 15, filed with the Department on December 31, 1996, to become effective January 30, 1997 [Public Access Smartline Service], and M.D.P.U. No. 10 filed January 24, 1997, to become effective February 23, 1997 [elimination of coin rate for local calls] by New England Telephone & Telegraph Company d/b/a/ NYNEX.

including its proposed increase in the coin rate, and invited interested persons to comment. Notice at 1-2. Comments were submitted by the Attorney General of the Commonwealth ("Attorney General"), MCI Telecommunications Corporation ("MCI"), the New England Public Communications Council, Inc. ("NEPCC"), and the National Consumer Law Center, Inc. ("NCLC"). NYNEX filed Reply Comments.

On March 31, 1997, the Department vacated the January 29, 1997 Suspension Order, thereby allowing NYNEX's proposed tariff revisions to take effect on April 1, 1997. Order Vacating Suspension. In this Order, the Department states its reasons for taking that action.

II. SUMMARY OF NYNEX's FILINGS

To comply with the Payphone Orders, NYNEX nonstructurally separated (through an accounting reclassification) its existing payphone business from its regulated telephone operations, to establish a deregulated payphone service provider ("PSP"), eliminated all subsidies from its existing payphone operations, and unbundled its central office coin transmission services to provide service on a tariffed basis to independent PSPs (i.e., Customer-Owned, Coin-Operated Telephones ("COCOTs")). As part of its reclassification and removal of subsidies, NYNEX also has proposed to remove from its Massachusetts tariff No. 10 the $0.10 coin rate for initial-period local calls made from NYNEX payphones. NYNEX's new deregulated PSP will charge a $0.25 market-based rate for customer-dialed initial-period local coin calls. According to NYNEX, the cost of such a call is approximately $0.17.

NYNEX introduced PASL service which replaces its present public/semipublic coin payphone monthly interim compensation, which the Company states is a "substitute" for an FCC-mandated $47 million reduction in carrier common line charges (id. at 7, citing NYNEX Response to DPU IR-2-7).

Regarding the claim that NYNEX is prohibited from proposing to increase its local coin rate in this proceeding until the next annual price cap filing, NYNEX states that the commenters are incorrect (id. at 3). NYNEX argues that, since it is proposing to deregulate and detariff its initial period coin rate, that rate is not subject to the pricing rules (id. at 3-4, citing D.P.U. 94-50, at 219).

With respect to arguments that NYNEX's proposed coin rate increase is excessive, NYNEX contends that the $.25 rate is reasonable and "more market-based" than the current $.10 rate, and will ensure compliance with the FCC's "fair compensation" requirement (id. at 4-5). NYNEX states that the cost analysis submitted to the Department demonstrates that the current rate is not compensatory, citing a deficiency of $0.0527 between the average local revenue per call and the cost per local call (id. at 5, citing NYNEX Response to DPU IR-2-9).

In response to the concerns of the Attorney General and MCI that NYNEX will receive a "windfall" if the removal of payphone subsidies is not reflected by a decrease in intrastate rates until the June, 1997 annual price cap filing, NYNEX asserts that the price cap filing is the only existing Department-approved mechanism in which to reflect the change in revenues (id. at 6). Thus, NYNEX says it will reflect the full $32 million revenue reduction associated with the proposed coin rate change, which includes the removal of subsidies, in

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March 31, 1997

Mary L. Cottrell, Secretary
Department of Public Utilities
Commonwealth of Massachusetts
Leverett Saltonstall Building
100 Cambridge Street, 12th floor
Boston, Massachusetts 02202

Re: D.P.U. 97-18 -- Public Access Smartline Service and Detariffed Local Coin Rate

Dear Ms. Cottrell:

Enclosed for filing in the above-captioned proceeding is the complete version of New England Telephone and Telegraph Company, d/b/a NYNEX's replies to the Department's Second Set of Information Requests, Item Nos. 7, 8 and 9. Partial responses were inadvertently filed with the Department on Friday, March 28, 1997.

I apologize for any inconvenience that this may have caused you.

Thank you for your assistance in this matter.

Very truly yours,

Barbara Anne Sousa

Barbara Anne Sousa

Enclosure

cc: Andrew Kaplan, Hearing Officer
Patrick McLarney, Director - Telecommunications Division
Michael Isenberg, Esq., Assistant Director - Telecommunications Division
Janice McCoy, Telecommunications Analyst